

² The Board notes that, following the July 17, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the caserecord that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

was without fault, because he concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$334.07 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On December 21, 1993 appellant, then a 45-year-old delivery driver, filed a traumatic injury claim (Form CA-1) alleging that on December 7, 1993 he sustained a back condition while in the performance of duty. OWCP accepted the claim for displacement of lumbar intervertebral disc without myelopathy and other intervertebral disc displacement. The record reflects that OWCP paid appellant wage-loss compensation on the supplemental rolls as of June 3, 1995 and on the periodic rolls as of June 16, 2002.

On September 20, 2018 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form.

On November 5, 2018 OWCP received from SSA an October 17, 2018 form, which showed SSA benefit rates with a FERS offset and without a FERS offset, from October 2010. Beginning October 2010, the SSA rate was \$999.00 with FERS and \$905.00 without FERS, beginning December 2010, the SSA rate was \$999.00 with FERS and \$905.00 without FERS, beginning December 2011, the SSA rate was \$1,035.00 with FERS and \$938.00 without FERS, beginning December 2012, the SSA rate was \$1,053.00 with FERS and \$954.30 without FERS, beginning December 2013, the SSA rate was \$1,417.00 with FERS and \$968.00 without FERS, beginning December 2014, the SSA rate was \$1,441.00 with FERS and \$985.00 without FERS, beginning December 2015, the SSA rate was \$1,441.00 with FERS and \$985.00 without FERS, beginning December 2016, the SSA rate was \$1,445.00 with FERS and \$988.00 without FERS, and beginning December 2017, the SSA rate was \$1,474.00 with FERS and \$1,007.70 without FERS.

On April 10, 2019 OWCP provided the SSA with another FERS/SSA dual benefits calculation form.³

On May 6, 2019 OWCP received the completed form from SSA, which showed SSA benefit rates with a FERS offset and without a FERS offset from October 10, 2010 to December 2018. It was noted that, from May 1998 to October 10, 2010 and from September 2013 to September 2014, appellant received disability benefits. Beginning October 2010, the SSA rate was \$999.50 with FERS and \$697.60 without FERS, beginning December 2010, the SSA rate was \$999.50 with FERS and \$697.60 without FERS, beginning December 2011, the SSA rate was \$1,035.50 with FERS and \$722.70 without FERS, beginning December 2012, the SSA rate was \$1,053.10 with FERS and \$735.00 without FERS, beginning September 2014, the SSA rate was \$1,417.30 with FERS and \$989.20 without FERS, beginning December 2014, the SSA rate was \$1,441.30 with FERS and \$1,006.00 without FERS, beginning December 2015, the SSA rate was \$1,441.30 with FERS and \$1,006.00 without FERS, beginning December 2016, the SSA rate was

³ SSA noted that disability was payable for the period January 1999 through September 2010.

\$1,445.60 with FERS and \$1,009.00 without FERS, beginning December 2017, the SSA rate was \$1,474.50 with FERS and \$1,029.10 without FERS, and beginning December 2018, the SSA rate was \$1,515.70 with FERS and \$1,057.90 without FERS.

On February 10, 2020 OWCP issued a preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$26,479.89, because he received FECA wage-loss compensation benefits concurrently with SSA age-related retirement benefits from October 1, 2010 through August 17, 2019, without an appropriate offset. It provided a calculation of the overpayment and found appellant without fault in the creation of the overpayment because he was not aware, nor could he reasonably have been expected to know, that it had paid compensation incorrectly. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a fair repayment method. It also noted that he could request waiver of recovery of the overpayment, provided him with an overpayment action request form containing appeal rights, and afforded 30 days for a response.

OWCP related in the preliminary notice that effective October 1, 2010 appellant's SSA rate was \$999.00 with FERS and \$905.00 without FERS, effective December 1, 2011 the SSA rate was \$1,035.00 with FERS and \$938.00 without FERS, effective December 1, 2012 the SSA rate was \$1,053.00 with FERS and \$954.30 without FERS, effective September 1, 2014 the SSA rate was \$1,417.00 with FERS and \$989.20 without FERS, effective December 1, 2014 the SSA rate was \$1,441.30 with FERS and \$1,006.00 without FERS, effective December 1, 2016 the SSA rate was \$1,145.60 with FERS and \$1,009.10 without FERS, effective December 1, 2017 the SSA rate was \$1,474.50 with FERS and \$1,029.10 without FERS, and effective December 1, 2019 the SSA rate was \$1,515.70 with FERS and \$1,057.90 without FERS.

The FERS Offset Overpayment memorandum showed the overpayments that appellant received from October 1, 2010 to August 17, 2019. From October 1 through November 30, 2010, appellant received an overpayment of \$189.03, from December 1 2010 through November 30, 2011, he received an overpayment of \$1,131.10, from December 1 2011 through November 30, 2012, he received an overpayment of \$1,170.40, from December 1 through 31, 2012, he received an overpayment of \$1,288.52, from September 1 through November 30, 2014, he received an overpayment of \$1,283.40, from December 1, 2014 through November 30, 2015, he received an overpayment of \$5,237.95, from December 1, 2015 through November 30, 2016, he received an overpayment of \$5,252.30, from December 1, 2016 through November 30, 2017, he received an overpayment of \$1,643.70, from December 1, 2017 through November 30, 2018, he received an overpayment of \$5,359.48, and from December 1, 2018 through August 17, 2019, he received an overpayment of \$3,924.00, for a total overpayment of \$26,479.89.

On March 3, 2020 appellant completed the Form OWCP-20 and provided supporting financial documentation. He listed his monthly income as \$1,380.00 in SSA benefits. Appellant listed monthly expenses totaling \$2,381.31. He listed total liquid assets of \$40,857.34

By final overpayment decision dated July 17, 2020, OWCP determined that appellant had received an overpayment of compensation in the amount of \$26,479.89, because a portion of his SSA age-related retirement benefits was based on credits earned while working in the Federal Government and that this portion of his SSA benefits was a prohibited dual benefit. It further found that he was not at fault in the creation of the overpayment, but denied waiver of recovery of

the overpayment. OWCP noted that appellant responded to the preliminary overpayment determination and found that he had monthly income of \$1,380.00 from SSA and \$1,336.28 from FECA, for a total monthly income of \$2,716.28. It further found that he had monthly expenses of \$2,381.31, which resulted in an excess of monthly income over expenses in the amount of \$334.97. OWCP explained that the overpayment could not be waived because there was no evidence to substantiate that adjustment or recovery would defeat the purpose of FECA or be against equity or good conscience. It required recovery of the overpayment by deducting \$334.07 every 28 days from appellant's continuing wage-loss compensation payments.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her federal employment.⁴ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁵ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁶

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related benefits that are attributable to federal service of the employee.⁷ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation.

As noted, a claimant cannot receive both wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period. The concurrent receipt of FECA benefits and SSA age-related retirement benefits is a prohibited dual

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ *Id.* at § 8129(a).

⁷ 20 C.F.R. § 10.421(d); *see R.R.*, Docket No. 19-0104 (issued March 9, 2020); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *L.J.*, 59 ECAB 264 (2007).

⁸ FECA Bulletin No. 97-09 (February 3, 1997). *See F.F.*, Docket No. 19-1198 (issued April 19, 2021); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

benefit.⁹ In this case, OWCP was notified by SSA that appellant had concurrently received FECA benefits and SSA age-related retirement benefits attributable to his federal service, without an appropriate offset. Consequently, the fact of overpayment has been established.

Although the Board finds that the fact of overpayment has been established, the Board further finds that the case is not in posture for decision with respect to the period(s) and amount of the overpayment. On November 5, 2018 OWCP received a completed FERS/SSA dual benefits calculation form that contained monthly SSA benefits rates beginning December 2010 with and without FERS contributions. However, on May 6, 2019, OWCP received another completed FERS/SSA dual benefits calculation form, which contained different amounts. OWCP's FERS Offset Calculation Worksheet contained SSA rates with and without FERS that did not exactly match either of the rates as reported on the forms received from SSA on November 5, 2018 or May 6, 2019. Furthermore, the Board notes that SSA indicated that appellant had received disability benefits during the period September 2013 to September 2014. It remains unclear whether OWCP accounted for his receipt of disability benefits in its overpayment calculation. The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of compensation with a clear statement showing how the overpayment was calculated.¹⁰ Therefore, the Board finds that the case is not in posture for decision regarding the period(s) and amount of the overpayment.

Accordingly, the case shall be remanded for OWCP to determine the proper period(s) and amount of the overpayment of compensation based on the correct SSA age-related retirement benefit rates for the period(s) during which the overpayment occurred. It shall then issue a new preliminary overpayment determination, with an overpayment action request form, Form OWCP-20, and instructions for appellant to provide supporting financial information. After this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹¹

CONCLUSION

The Board finds that OWCP properly found that appellant received an overpayment of compensation because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. The Board further finds that the case is not in posture for decision with respect to the period(s) and amount of the overpayment.

⁹ FECA Bulletin No. 97-09 (February 3, 1997); *see also* A.V., Docket No. 20-0774 (issued June 10, 2021); *see also* N.B., *id.*

¹⁰ *See* A.V., *id.*; *see* A.P., Docket No. 19-1671 (issued February 22, 2021); J.M., Docket No. 18-1505 (issued June 21, 2019); *Teresa A. Ripley*, 56 ECAB 528 (2005).

¹¹ In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot. *See* C.C., Docket No. 16-1190 (issued May 12, 2017).

ORDER

IT IS HEREBY ORDERED THAT the July 17, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: December 3, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board